

## DRAFT HABITAT LOSS PERMIT INCLUDING 4(d) FINDINGS

**PLEASE NOTE THAT A FORMAL APPLICATION FOR A HABITAT LOSS PERMIT HAS NOT BEEN FILED AT THIS TIME. THE FOLLOWING IS A DRAFT FORM OF DECISION FOR A HABITAT LOSS PERMIT SHOWING THE FORMAT AND POSSIBLE CONDITIONS FOR A FUTURE HABITAT LOSS PERMIT. BECAUSE A FORMAL APPLICATION HAS NOT BEEN FILED, CERTAIN DATES, FINDINGS AND OTHER INFORMATION IS ABSENT FROM THE DRAFT FORM OF DECISION, THIS INFORMATION WILL BE INCLUDED IN THE FINAL FORM OF DECISION.**

Draft date: March 2009

Stonegate, Merriam Mountains LLC  
Joseph Perring  
27071 Cabot Road, Suite 106  
Laguna Hills, CA 92653

### **DRAFT Habitat Loss Permit**

APPLICATION NUMBER: HLPxx-xxx, ER04-08-028x

ASSOCIATED PERMIT(S): GPA04-06; SP04-006, R04-013, TM5381, S04-035, S04-036, S04-037, S04-038, ER04-08-028

NAME OF APPLICANT: Stonegate Merriam, LLC

### DESCRIPTION/LOCATION OF LOSS:

This document presents findings required for the issuance of a Habitat Loss Permit under the Endangered Species Act Section 4(d) rule for the California gnatcatcher (*Polioptila californica*). The action being addressed within these findings is the removal of coastal sage scrub associated with the Merriam Mountains project within the County of San Diego. The project will impact 23.1 acres of coastal sage scrub (CSS) onsite and one pair of California gnatcatcher onsite. An additional 6.0 acres of CSS will be impacted offsite as a result of road improvements, for a total of 29.1 acres of CSS impact.

The project is located on 2,327 acres in the north of the City of Escondido in the unincorporated area of San Diego County. It is in the North County Metropolitan Subarea, generally bound on the east by I-15, on the south by Deer Springs Road, on the west by Twin Oaks Valley Road, and by agriculture and estate development to the north with Gopher Canyon Road located approximately one-half mile north of the site). Thomas Brothers Coordinates: Page1088, Grid J/3.

The proposed project would result in 2700 dwelling units and 10.1 acres of commercial use. The proposed project would directly impact about 598 acres (including graded

slopes, various fuel treatment areas, off-site road and utility improvements, semi-isolated undeveloped open space areas and a natural park for residents. An additional 537 acres (about 23% of the site) would be impacted by graduated fuel breaks and project natural parkland. Overall, a total of 1,135 acres would be impacted and 1,192 acres would be preserved on the 2,327 acre site. Off-site improvements will impact an additional 73 total acres.

Elevation of the site ranges from approximately 680 feet along Twin Oaks Valley Road in the west-central portion of the site to 1,752 ft at the highest of the central mountain tops. The site is characterized by rocky peaks and minor drainages. It is undeveloped with 92 percent of the site being old growth chaparral. Coastal sage scrub is found primarily on the southeastern portion with small patches in the interior of the site mostly associated with prior disturbance. Several state and federal jurisdictional drainages are found on site draining from the onsite ridge tops to South Fork Moosa Creek and South Fork Gopher Creek.

The southern portion of the site is proposed for development, with 1192 acres in the northern portion being preserved and managed as biological open space. The site is within a block of mostly medium habitat value habitat with portions being high and very high habitat value as indicated by the County Habitat Evaluation Map (2004). The affected CSS is not within federally designated critical habitat for the California gnatcatcher (2000).

About half of the 28.6 acres of CSS is within one patch within what is known as the I-15 ladder. The rest is considerably more fragmented and associated with Deer Springs Road improvements and previously disturbed chaparral areas in the project's interior. Pacific Southwest Biological Services evaluated the biological resources on the property in a biological technical report (PSBS, 2007). A protocol survey for the California gnatcatcher (*Polioptila californica californica*) was completed in 2004. One pair was detected during the survey. Therefore, the site is considered "occupied" by California gnatcatcher. A Biological Resources Memorandum (Hayworth 2009) was prepared to address project changes, including the revised alignment along Deer Springs Road and additional off-site improvements that have arisen since preparation of the 2007 PSBS Biological Technical Report.

Three relatively low sensitivity plants occur on the site: Summer-Holly (*Comarostaphylos diversifolia* ssp. *diversifolia*), Ramona Horkelia (*Horkelia truncata*) and Engelmann Oak (*Quercus engelmannii*). Numbers of and types of sensitive fauna on the Merriam site are somewhat limited given the large size of the site; this is probably a result of the relatively low habitat diversity (see above). Identified sensitive fauna includes the following: Northern Red-diamond Rattlesnake (*Crotalus ruber ruber*), San Diego Horned Lizard (*Phrynosoma coronatum blainvillei*), Belding's Orange-throated Whiptail (*Aspidoscelis hyperythrus beldingi*), Cooper's Hawk (*Accipiter cooperi*), a single pair of Coastal California Gnatcatchers (*Polioptila californica californica*) and San Diego Desert Woodrat (*Neotoma lepida intermedia*). There are historical records or undocumented reports of additional sensitive species on the site,

including Burrowing Owl (*Athene cunicularia*), Golden Eagle (*Aquila chrysaetos*) and Mountain Lion (*Felis (Puma) concolor*); neither of these two species appears to still utilize the site. Additionally California Thrasher (*Toxostoma redivivum*), a common chaparral species in San Diego County, occurs on the site and is on the National Audubon Society's Yellow List of species to watch. The Southern Mule Deer (*Odocoileus hemionus*), an important indicator of habitat health, may occur occasionally in limited numbers. Their underutilization of the site is likely because of the prevalence of very dense chaparral (no recent sign of this species was detected during the surveys, although very old droppings were observed).

The NCCP Flowchart indicates the CSS habitat is "Intermediate Value for Long-Term Conservation." At the required 2:1 mitigation ratio for this impact, the total required mitigation is 58.2 acres of occupied CSS, with 5.5 acres being preserved onsite and 52.7 acres would either be mitigated offsite or by habitat creation.

Impacts to state and federal jurisdictional wetlands will require state and federal permits and mitigation either on- or offsite at a ratio of 3:1 that includes a minimum 1:1 wetland creation component. Other habitat impacts will be mitigated as follows:

Vegetation Type	Existing (on site)	Total Impact (on site + off site)	Mitigation Ratio	Required Mitigation Prior to Preservation On Site	Preserved On Site	Remaining Mitigation Requirement <sup>E</sup>
Disturbed habitat	27.3	6.7	0	0.0	25.2	0.0
Urban/developed	13.0	43	0	0.0	0.0	0.0
Orchard	2.4	2.5	0	0.0	1.0	0.0
Intensive agriculture	4.9	9.6	0	0.0	0.0	0.0
Eucalyptus woodland	1.5	2.8	0	0.0	0.0	0.0
Diegan coastal sage scrub <sup>A</sup>	28.6	29.1	2	58.2	5.5	52.7
Granitic southern mixed chaparral	2,156.6	1,084.5	0.5	542.3	1,091.6	---549.4
Mafic S-mixed chaparral	57.4	3.2	3	9.6	57.4	—47.8
Non-native grassland	23.2	21.5	0.5	10.8	3.7	7.1
Freshwater marsh	0.1	0	3	0.0	N/A	0.0
Southern coast live oak riparian forest	2.3	1.3	3	4.8	N/A	3.9
Sycamore alluvial woodland	1.6	0	3	0.0	N/A	0.0
Southern willow scrub/mulefat scrub	0.3	0.3	3	0.9	N/A	0.9
Mulefat scrub	0.2	0.2	3	0.6	N/A	0.6
Southern willow scrub	2.6	0.4	3	1.2	N/A	1.2
Southern willow scrub/tamarisk scrub	0.6	0	3	0.0	N/A	0.0
Coast live oak woodland	4.2	2.7	3	8.1	1.9	6.2
Non-vegetated channel	0.0	0.5	1	0.5	0.0	0.5
Non-vegetated wetlands	0.2	0.1	3	0.3	N/A	0.3
TOTALS	2,327	1,205.3	N/A	N/A	1,192	

<sup>A</sup> Includes Coast Sage Scrub–Chaparral Scrub and Disturbed CSS–CS

Negative numbers mean no off-site mitigation necessary

Mitigation may include purchase of credits, off-site purchase and management, and/or revegetation

In addition to onsite dedication of open space, revegetation of habitats, and purchase of offsite habitat, biological mitigation includes dedication of adequate limited building zones easements (based upon fire modeling) placed adjacent to open space and project boundaries. It also includes temporary and permanent fencing, open space signs, construction limitations to avoid take of gnatcatchers, raptors, and migratory birds and construction monitoring for impacts to wetland areas, and finally, development and implementation of a resource management plan are required for stewardship and monitoring of biological resources preserved in the dedicated conservation/open space easement.

The project footprint was the subject of a hardline agreement with the wildlife agencies for the draft North County Multiple Species Conservation Program (MSCP). The project footprint has minimized impacts to the core habitat with the greatest potential for connectivity to the west and north. The project was discussed at the Agency Batching Meeting and the Wildlife Agencies and DPLU met on the site several times to discuss the project and draft North County Multiple Species Conservation Program (NSMSCP) issues in 2004 and 2005.

#### DECISION:

The Director of Planning and Land Use has approved your application for a HABITAT LOSS PERMIT. This Habitat Loss Permit approval does not become final until both the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG) concur with the Director's approval, by the either of the following:

1. Concurrence implied by allowing a 30-day period, initiated by their receipt of this decision, to lapse without presenting written notification to the County that the decision is inconsistent with the Southern California Coastal Sage Scrub (CSS) Natural Community Conservation Planning (NCCP) Process Guidelines (CDFG, November 1993) or any approved subregional mitigation guidelines; or
2. Granting concurrence through written notification to the County prior to the conclusion of the 30-day period, initiated by their receipt of this decision, that the project is consistent with the Southern California CSS NCCP Process Guidelines or any approved subregional mitigation guidelines.

Pending the issuance of an associated Grading Permit, Clearing Permit or Improvement Plan from the County of San Diego, this Habitat Loss Permit allows for the loss of the above-described coastal sage scrub habitat (see attached Habitat Loss Exhibit) and incidental take of the California gnatcatcher for a period of one calendar year commencing the day concurrence is given by both the USFWS and CDFG. If the loss of habitat, as authorized by this Habitat Loss Permit, has not occurred within this one-year period, this Habitat Loss Permit and the authorization for the loss of coastal sage scrub habitat expire.

This Habitat Loss Permit cannot be relied upon for the clearing, grading or removal of any vegetation until a valid Grading Permit, Clearing Permit or Improvement Plan has been issued from the County of San Diego authorizing such vegetation removal. Furthermore, use and reliance upon this Habitat Loss Permit cannot occur until all of the requirements as specified within the "Conditions of Approval" section of this permit have been satisfied.

CONDITIONS OF APPROVAL:

- I. Prior to approval of grading permits or improvement plans for applicable units or phases, and prior to approval of the Final Map for applicable units or phases of grading, the applicant shall:
  - A. Grant to the County of San Diego and the California Department of Fish and Game an open space easement, or grant to the California Department of Fish and Game a conservation easement, as shown on the approved Tentative Map on file with the Department of Planning and Land Use as Environmental Review Number Log # 04-08-028. This easement is for the protection of biological resources and prohibits all of the following on any portion of the land subject to said easement: grading; excavation; placement of soil, sand, rock, gravel, or other material; clearing of vegetation; construction, erection, or placement of any building or structure; vehicular activities; trash dumping; or use for any purpose other than as open space. Granting of this open space authorizes the County and its agents to periodically access the land to perform management and monitoring activities for the purposes of species and habitat conservation.

The sole exceptions to this prohibition are:

1. Selective clearing of vegetation by hand to the extent required by written order of the fire authorities for the express purpose of reducing an identified fire hazard. While clearing for fire management is not anticipated with the creation of this easement, such clearing may be deemed necessary in the future for the safety of lives and property. All fire clearing shall be pursuant to the Uniform Fire Code and the Memorandum of Understanding dated February 26, 1997, between the wildlife agencies and the fire districts, and any subsequent amendments thereto.
2. Activities conducted pursuant to a revegetation or habitat management plan approved by the Director of Planning and Land Use or the Director of Public Works.
3. Vegetation removal or application of chemicals for vector control purposes where expressly required by written order of the Department of Environmental Health of the County of San Diego.
4. Maintenance and construction of private and public drainage facilities to the extent approved or required by written order of the Director of Public Works for the express purpose of reducing an identified flooding or drainage hazard. All maintenance of drainage facilities pursuant to this exception shall not be

initiated until all applicable federal, state and local permits (e.g., California Section 1600 Streambed Alteration Agreement, County Watercourse Permit) have been obtained. Passive recreation limited to hiking and equestrian trails and associated staging and overlook areas.

6. Improvement, use and maintenance of public facilities located within dedicated easements as shown on the approved Tentative Map.

\* This condition satisfies mitigation in the amounts of 5.5 acres of CSS, 542.3 acres of southern mixed chaparral, 9.6 acres of mafic chaparral, 3.7 acres of non-native grassland, and 1.9 acres of coast live oak woodland.

- B. Grant to the County of San Diego a Limited Building Zone Easement as shown on the Tentative Map on file with the Department of Planning and Land Use as Environmental Review Number Log # 04-08-028. The purpose of this easement is to limit the need to clear or modify vegetation for fire protection purposes within the adjacent biological open space easement. The easement prohibits the construction or placement of any structure designed or intended for occupancy by humans or animals.
- C. Provide evidence to the satisfaction of the Director of Planning and Land Use that a Clean Water Act, Section 401/404 permit has been issued by the California Regional Water Quality Control Board and the U.S. Army Corps of Engineers for all project related disturbances of waters of the U.S. and/or associated wetlands or provide evidence that such permit is not required.
- D. Provide evidence to the satisfaction of the Director of Planning and Land Use that a Streambed Alteration Agreement has been issued by the California Department of Fish and Game for all project related disturbances of any streambed or provide evidence that such an agreement is not required.
- E. Provide evidence to the satisfaction of the Director of Planning and Land Use that a contract with a biological construction monitor has been executed to perform the following duties: be onsite weekly during vegetation clearing, grubbing, and grading, when these activities are within 300 feet of biological open space or offsite native vegetation to ensure that all habitat protection measures are in place including fencing and erosion control measures adjacent to preserved areas, and report deficiencies immediately to the DPW Construction Inspector; periodically monitor the work area for excessive dust generation; train contractors, and construction personnel, including the purpose for resource protection, a description of the gnatcatcher and its habitat, and the conservation measures that should be implemented during project construction; review all landscape plans to ensure landscaping has avoided the use of plants that require intensive irrigation, fertilizers or pesticides, invasive, and non-native plants; halt work when deficiencies require mediation, and notify DPW Construction Inspector within 24 hours if it is necessary to halt work; produce weekly reports to keep at the project site; produce a final report at the completion of each phase or

unit and submit to the Director of the DPLU; confer with the Wildlife Agencies within 24 hours any time protected habitat or endangered species are being affected by construction; determine if nesting migratory birds will be affected by clearing and grading and direct construction activities away from nesting areas; and be responsible for notification and oversee remediation if impacts to preserved habitat should occur.

- F. Provide for the approval of the Director of Planning and Land Use evidence that (1) 52.7 acres of coastal sage scrub that is occupied by California gnatcatcher; (2) 7.1 acres of non-native grassland; (3) 3.9 acres of southern coast live oak riparian forest (creation/enhancement); (4) 0.9 acre of southern willow scrub/mule fat scrub (creation/enhancement); (5) 0.6 acre of mule-fat scrub(creation/enhancement); (6) 1.2 acres of southern willow scrub (creation/enhancement); (7) 6.2 acres of coast life oak woodland; and (8) 0.8 acre of non-vegetated wetland habitat credit has been secured in one or more of the three following ways:

1. Credits have been purchased in mitigation bank approved by the California Department of Fish & Game, located in the vicinity of the project. Evidence of purchase shall include the following information to be provided by the mitigation bank:
  - a. A copy of the purchase contract referencing the project name and numbers for which the habitat credits were purchased.
  - b. If not stated explicitly in the purchase contract, a separate letter must be provided identifying the entity responsible for the long-term management and monitoring of the preserved land.
  - c. To ensure the land will be protected in perpetuity, evidence must be provided that a dedicated conservation easement or similar land constraint has been placed over the mitigation land.
  - d. An accounting of the status of the mitigation bank. This shall include the total amount of credits available at the bank, the amount required by this project and the amount remaining after utilization by this project.

**-AND/OR-**

2. Land has been purchased, preserved, and managed in the vicinity of the project. A Resource Management Plan (RMP) for the land must be submitted and approved by the Director of the Department of Planning and Land Use. An open space easement over the acquired habitat must be dedicated to the County of San Diego prior to or immediately following the approval of the RMP. Alternatively, proof that a federal, state or local government agency with the primary mission of resource management has taken fee title to the land may be accepted in lieu of an easement.

**-AND/OR-**

3. Restore and revegetate land as shown in the Conceptual Uplands and Wetlands Revegetation Plans (Log # 04-08-028; FEIR, Appendix X) as follows: (1) Submit to and receive approval from the Director of the Department of Planning and Land Use a Revegetation Plan. The Revegetation Plan shall include (but not be limited to) the following to ensure the establishment of the vegetation: objectives, 24"x 36" map showing the revegetation areas, site preparation information, type of planting materials (e.g. species ratios, source, size material, etc.), planting program, 80 percent success criteria, 5-year monitoring plan and detailed cost estimate. The cost estimate shall include planting, plant materials, irrigation, maintenance, monitoring and report preparation. The report shall be prepared by a County approved biologist and a State of California Licensed Landscape Architect.; (2) Enter into a Secured Agreement with the County of San Diego Department of Planning and Land Use consisting of a letter of credit, bond, or cash for 100 percent of the estimated costs associated with the implementation of the Revegetation Plan and a 10 percent cash deposit not to exceed \$30,000. A cost estimate based on a 3% annual inflation rate shall be submitted and approved by the Director of Planning and Land Use which includes the cost of the plant stock and its installation, irrigation system and installation, cost of monitoring and maintenance of the revegetation area for the required five year period, and report preparation and staff time to review. This agreement is intended to guarantee commitment to project completion and success. The monitoring time and the length of time the Secured Agreement and cash deposit will be in effect starts at the time the installation is accepted by a County staff representative. The Secured Agreement and cash deposit shall be released upon completion of the Revegetation Plan implementation provided the installed vegetation is in a healthy condition and meets the approved success criteria.
- G. Submit and have approved by the DPLU, a Resource Management Plan (RMP) for the perpetual management of the project's open space consistent with the approved conceptual RMP for the project on file with the Department of Planning and Land Use as Environmental Review Number Log # 04-08-028. The RMP shall include a contract, or other legal agreement, between the County and the project applicant to provide assurance of future compliance.
- II. The following specific notes shall be placed on any of the following plans: grading, and or improvement plans, and or building plans:
- A "Prior to the conclusion of grading activities and Final Grading Release placement of permanent fencing/walls and open space signage is required as follows:
1. The grading, and or improvement plans, and/or building plans shall show permanent fences/walls along the open space easement/development



- boundaries. The fence/wall shall be continuous and at least 4-feet high and have a minimum construction of three strand round wire.
2. All open space fences/walls shall have open space signs at 100-foot intervals. The signs must be corrosion resistant, a minimum of 6" x 9" in size, not less than 3- feet in height from the ground surface, and state the following: Sensitive Environmental Resources; Disturbance Beyond this Point is Restricted by Easement; Information: Contact County of San Diego, Department of Planning and Land Use; Ref: Log #04-08-028;
  3. Provide evidence to the satisfaction of the Director of Planning and Land Use, evidence that the site photos and a statement from a California Registered Engineer, or licensed surveyor that the permanent walls or fences, and open space signs have been installed according to the direction given above."
- B. "Prior to the commencement of grading activities conspicuous temporary fences shall be in place to protect natural resources when any clearing, grading, or construction is within 100 feet of Biological Open Space or offsite natural vegetation, as follows:.
1. The grading, and or improvement plans, and or building plans shall show the location of temporary fences to protect the Biological Open Space boundary and to protect specific biological resources as required by the Biological Construction Monitor.
  2. The temporary fencing shall be removed after the conclusion of such activity."
- C. "Restrict all brushing, clearing and/or grading such that none will be allowed within 300 feet of Coastal Sage Scrub habitat during the breeding season of the California gnatcatcher. This is defined as occurring between February 15 and August 31 of any year. The Director of Planning and Land Use may waive this condition, through written concurrence from the US Fish and Wildlife Service and the California Department of Fish and Game, that no California gnatcatcher are present in the vicinity of the brushing, clearing or grading."
- D. "Restrict all brushing, clearing and/or grading such that none will be allowed within 100 feet of native or naturalized habitats during the migratory bird breeding season, unless the Biological Monitor determines that no migratory bird nests will be affected. This period is defined as occurring from January 15 through August 31. If any active nests are detected, the area will be flagged and mapped on the construction plans along with a minimum of a 25-foot buffer and up to a maximum of 300 feet, as determined by the Biological Construction Monitor, and will be avoided until the nesting cycle is complete. The Biological Monitor shall verify in writing to the Director of Planning and Land Use no sooner than 7 days and no later than 24 hours before commencement of each phase of grading that no migratory birds are nesting in the area to be cleared, grubbed, or graded."
- E. "At a minimum, the biological monitor shall be onsite weekly during vegetation clearing, grubbing, and grading, and daily during rain events, when construction

activities are within 300 feet of Biological Open Space or offsite native vegetation to ensure that all habitat protection measures are in place;

#### ENVIRONMENTAL FINDINGS:

##### A. CEQA Findings

To be provided

##### B. FINDINGS MADE IN SUPPORT OF THE ISSUANCE OF THE HABITAT LOSS PERMIT:

The following findings are made based upon all of the documents contained in the record for this project and pursuant to Section 86.104 of County of San Diego Ordinance No. 8365 (N.S.) and Section 4.2.g of the CSS NCCP Process Guidelines (CDFG, November 1993):

#### Finding 1.a: The habitat loss does not exceed the five percent guideline.

The Merriam Mountains project will permanently impact 29.1 acres of coastal sage scrub (CSS) and one pair of California gnatcatcher (*Polioptia californica*). Approved CSS losses, as of the date of February 26, 2007 including this approval for the entire unincorporated County outside the MSCP, are presented in the following table:

#### Unincorporated Area CSS Cumulative Losses

Total loss allowed under five percent guideline:	2,953.3 acres
Cumulative loss of coastal sage scrub to date:	1,114.0 acres
Net loss due to this project:	29.1 acres
Total cumulative loss:	1,143.1 acres
Remaining loss under five percent guideline:	1,810.2 acres

The loss would not exceed the five percent guideline.

#### Finding 1.b: The habitat loss will not preclude connectivity between areas of high habitat values.

The project site contains about 28.6 acres of Diegan CSS, which occurs in five patches on the site in widely-spaced areas. The largest patch is about 18 acres and is occupied by one pair of Coastal California Gnatcatchers. This patch is connected to other patches along the I-15 corridor by an archipelago of habitat patches which form a kind of CSS "ladder" from core habitat along the San Luis Rey River to the project at the southern end of the ladder. Archipelago patches to the east lead to the Daley Ranch core in the city of Escondido.

The project is bound with tree crop agriculture to the south and the north and estate residential and intensive agriculture to the west. Better CSS connectivity is found on the eastern side of the I-15, through the Welk development. The onsite CSS is contiguous to a linear area of CSS along about 3,000 feet of CSS in the I-15 right of way. With project implementation, the offsite CSS would continue to provide habitat along this 3,000 feet of I-15 right-of-way, although future Caltrans' improvements should be expected.

Based on the design of the project which proposes clustering of development in the southern portion and least sensitive portion of the site, two patches totaling about 9.9 acres of CSS (35 percent) would be preserved. The project also proposes to revegetate a portion of the disturbed open space with Diegan CSS. The habitat loss of three patches of relatively isolated Diegan CSS would not preclude the existing connectivity along the I-15 "ladder" or between areas of high habitat value. The 18 acre patch along the I-15 is the southern most part of the ladder before it enters agricultural and urban portions of Escondido.

Additionally, the project proposes to preserve and maintain an off site area of Coastal Sage Scrub, occupied by California Gnatcatchers, which would directly provide for the long-term conservation of gnatcatcher habitat along the I-15 CSS ladder in North San Diego County.

For the reasons stated above, the habitat loss will not preclude connectivity between areas of high habitat values

Finding 1.c: The habitat loss will not preclude or prevent the preparation of the subregional NCCP.

The site is in the main portion of a block of generally medium value habitat with areas of high value habitat as indicated in the Habitat Evaluation Map for the draft NCMSCP. One area of high value habitat would be impacted but this area is an historic raptor nest that is no longer viable. As stated above, the site is surrounded by agricultural land to the north, west and south, with I-15 to the east. By clustering development in the southern half of the site and preserving an important core habitat in the northern half of the site in a managed habitat preserve, the future subregional NCCP is greatly enhanced.

The small cluster of estate homes proposed for the extreme north-east corner of the site is adjacent to other estate homes along the existing access road. This development would not preclude or prevent the subregional NCCP.

The development footprint was conceptually accepted by the wildlife agencies in a hardline agreement for the draft North County MSCP. A 1,192 acre habitat preserve would connect by a broad band of ownership (more than one-half mile) across Twin Oaks Valley Road to the San Marcos Mountains with very high and high-value habitats on the Habitat Evaluation Map of the draft NCMSCP. Additionally, the project maintains

about 80% of its existing frontage along the I-15 corridor when the fire fuel management areas are included.

For the above reasons, the finding that the habitat loss will not preclude or prevent the preparation of the subregional NCCP can be made for the project.

Finding 1.d: The habitat loss has been minimized and mitigated to the maximum extent practicable in accordance with Section 4.3 of the NCCP Process Guidelines.

The project incorporates a specific plan in order to reduce sprawl and maximize the surface area to perimeter ratio of the proposed open space. The project footprint and associated infrastructure impacts have been revised to minimize biological impacts by clustering the development, modifying the road alignments and pulling development back from the majority of the northern half of the site. In accordance with the Final Environmental Impact Report, the project's habitat impacts have been mitigated to less than significant levels by preservation and management of high value habitat at the following ratios: 2:1 for Diegan Coastal Sage Scrub, 0.5:1 for Granitic Southern Mixed Chaparral, 0.5:1 for Non-native Grassland, and 3:1 for Southern Willow Scrub/Mule-fat Scrub, Mule-fat Scrub, Southern Willow Scrub, and Coast Live Oak Woodland. All mitigation lands are to be placed in dedicated open space easements. The designated open space restricts development in adjacent habitat that is critical to the implementation of the draft NCMSCP and for survival of sensitive species. The entire on-site preserved habitat is within an area that has long-term conservation potential, expected long term viability and connectivity along the Interstate 15 corridor and the San Marcos Mountains.

In addition to dedication and designation of open space, the HLP would require that the following activities occur prior to removal of habitat:

- The Department of Fish and Game will be offered beneficiary status /for dedicated open space easements,
- A limited building zone easement will be placed adjacent to open space and project boundaries,
- Temporary and permanent fencing with open space signs will be located on the open space boundary facing all proposed development and along trails,
- Brushing, clearing, and/or grading will be restricted within 300 feet of natural habitat types during the breeding of the gnatcatcher and other migratory birds, such that no impacts to nesting migratory birds will occur.
- Specific sediment control measures and monitoring will be required for construction in stream bed watersheds, and
- Implementation of a Resource Management Plan, approved by the Director of Planning and Land Use and the Wildlife Agencies, for the preservation and management of the on-site open space easements is required. The plan will define activities for stewardship of the land and monitoring of biological

resources. A Property Analysis Record (PAR) or equivalent cost projection to ensure a sufficient endowment and designation of a conservancy or agency to management the land in perpetuity is required.

For the above reasons, the finding that the habitat loss has been minimized and mitigated to the maximum extent practicable can be made for the project.

Finding 2: The habitat loss will not appreciably reduce the likelihood of survival and recovery of listed species in the wild.

The loss of 29.1 acres both onsite and offsite of Diegan Coastal Sage Scrub, some of which is occupied by a single pair of California gnatcatchers, will not appreciably reduce the likelihood of survival and recovery of the California gnatcatcher because the project compensates for this loss of occupied habitat by purchasing and maintaining the Captain's Associates property located in the I-15 corridor about one mile north of the project. This property is occupied by at least one pair of California gnatcatcher. Additionally, other areas adjacent to the project site, within the I-15 right of way and historically occupied by Gnatcatchers, would be buffered from any project effects and would continue to support the species.

As a precaution, no clearing or grading of scrub habitats will be permitted during the breeding season of the California Gnatcatcher, unless pre-construction breeding surveys are done that show gnatcatchers would not be harmed.

Approximately 7.1 acres of Army Corps of Engineers jurisdiction and approximately 7.3 acres under California Department of Fish and Game jurisdiction would be impacted by the project. Appropriate permits would be obtained prior to any habitat disturbance associated with the approval of the associated grading permit. Therefore, there will be an added layer of protection for potential listed species associated with jurisdictional wetlands.

The site also supports several low sensitivity plants and animals, including Summer-Holly, Ramona Horkelia and Engelmann Oak and Northern Red-diamond Rattlesnake, San Diego Horned Lizard, Belding's Orange-throated Whiptail, Cooper's Hawk, and San Diego Desert Woodrat. After project implementation, populations of these species would be reduced commensurate with the loss of habitat. However, these species are relatively widespread in southern California, and particularly in the northern foothills of San Diego County and their regional populations would not be imperiled by implementation of the project. The project would not appreciably reduce these species because of the project's habitat preservation and management of the 1,192 acres placed in biological open space easements onsite, creation and enhancement of degraded habitats in the preserve area, maintaining most of the natural elements in the fire fuel management lands on the site (537 acres), and the requirement to purchase and preserve off-site habitats which would compensate for direct impacts to some habitats.

In summary, although direct impacts would occur to Diegan Coastal Sage Scrub, this impact would be compensated for by purchase and maintenance of sage scrub habitat occupied by California Gnatcatchers in the I-15 corridor, ensuring that the species can persist in the corridor. Conformance to the federal Endangered Species Act is expected to occur through the application for and approval of a Habitat Loss Permit for the habitat take. Impacts to Southern Mixed Chaparral would be mitigated by an equal or greater preservation of this habitat onsite in a well-configured managed habitat preserve in the northern half of the project site; this preserve maintains existing habitat linkages with the I-15 frontage, open areas to the north, and to the San Marcos Mountains to the west.

For all the above species, indirect impacts will also be mitigated by implementation of a Resource Management Plan and construction limitations, including breeding season avoidance, fencing, and monitoring.

In addition to dedication and designation of open space, the HLP would require that the following activities occur for the benefit of survival and recovery of listed species in the wild prior to removal of habitat:

- The Department of Fish and Game will be offered beneficiary status /for dedicated open space easements,
- A limited building zone easement will be placed adjacent to open space and project boundaries,
- Temporary and permanent fencing with open space signs will be located on the open space boundary facing all proposed development and along trails,
- Brushing, clearing, and/or grading will be restricted within 300 feet of natural habitat types during the breeding of the gnatcatcher and other migratory birds, such that no impacts to nesting migratory birds will occur.
- Specific sediment control measures and monitoring will be required for construction in stream bed watersheds, and
- Implementation of a Resource Management Plan, approved by the Director of Planning and Land Use and the Wildlife Agencies, for the preservation and management of the on-site open space easements is required. The plan will define activities for stewardship of the land and monitoring of biological resources. A Property Analysis Record (PAR) or equivalent cost projection to ensure a sufficient endowment and designation of a conservancy or agency to management the land in perpetuity is required.

Considering all of the above, the finding that the habitat loss will not appreciably reduce the likelihood of survival and recovery of listed species in the wild can be made for the project.

Finding 3: The habitat loss is incidental to otherwise lawful activities.

Habitat removal will require additional discretionary approvals by the County and wildlife agencies. Habitat removal will not commence until:

- All appropriate grading permits, improvement plans, and/or clearing permits have been issued.
- Project conformance with Section 86.104 of the San Diego County Code, including issuance of a Habitat Loss Permit by the County of San Diego and concurrence by the Department of Fish and Game and U.S. Fish and Wildlife Service has been completed.
- Take authorization under the federal and state Endangered Species Acts has been granted.

Because no removal of habitat would occur prior to the approval and issuance of all necessary permits, the habitat loss would be incidental to otherwise lawful activities.

**NCCP Flowchart**

1. Natural land: Is natural vegetation present? Yes.
2. CSS: Is CSS present? Yes.
3. Large size: Is the CSS the most dense CSS in the subregion? No, based on 50% cover within 1 mile radius.
4. Proximity: Is the land close to High Value District? Yes, the I-15 gnatcatcher corridor.
5. Landscape linkages: Is the land located in a corridor between Higher Value Habitats? No, urban lands of Escondido are found to the south.
6. Species presence: Does the land support high density of target species? No.  
Does the land support significant populations of highly endemic species or rare sub-habitat types? No.

In consideration of the above flowchart, the project is of Intermediate Value for long-term conservation; a 2:1 mitigation ratio is appropriate.

MITIGATION MONITORING AND REPORTING PROGRAM:

The following shall be the Mitigation Monitoring or Reporting Program for this Habitat Loss Permit:

Public Resources Code Section 21081.6 requires the County to adopt a mitigation reporting or monitoring program for any project that is approved on the basis of a

mitigated Negative Declaration or an Environmental Impact Report for which findings are required under Section 21081(a)(1). The program must be adopted for the changes to a project which the County has adopted, or made a condition of project approval, in order to mitigate or avoid significant effects on the environment. The program must be designed to ensure compliance during project implementation.

The mitigation monitoring program is comprised of all the environmental mitigation measures adopted for the project. The full requirements of the program (such as what is being monitored, method and frequency, who is responsible, and required time frames) are found within the individual project conditions. These conditions are referenced below by category under the mechanism which will be used to ensure compliance during project implementation.

- Subsequent Project Permits

Compliance with the following conditions is assured because specified subsequent permits or approvals required for this project will not be approved until the conditions have been satisfied: **I A, B, C, D, E, F, and G.**

- Ongoing Mitigation

Compliance with the following conditions is assured because County staff will monitor the on-going requirements and, if necessary pursue the remedies specified in the project permit, the security agreement, or the mitigation monitoring agreement: **II A, B, C, D, and E.**

**NOTICE:** The issuance of this permit by the County of San Diego does not authorize the applicant for said permit to violate any federal, state, or county laws, ordinances, regulations, or policies, including but not limited to, the federal Endangered Species Act and any amendments thereto.

**NOTIFICATION TO APPLICANT:** The County of San Diego hereby notifies the applicant that State law (A.B. 3158) effective January 1, 1991, requires certain projects to pay fees for purposes of funding the California Department of Fish and Game. If you made this payment at the time of public review of the environmental document pursuant to Administrative Code Section 362, Article XX, effective August 27, 1992, you have met this obligation. If the fee has not been paid, to comply with State law, the applicant should remit to the County Department of Planning and Land Use, within two (2) working days of the effective date of this approval (the “effective date” being the end of the appeal period, if applicable), a certified check payable to “County Clerk” in the amount of \$1,275 for a project with a Negative Declaration, or \$875 for a project with an Environmental Impact Report. These fees include an authorized County administrative fee of \$25. The fees may be waived for projects that are found by the Department of Planning and Land Use and the California Department of Fish and Game to have a de minimus impact on fish and wildlife resources. Failure to remit the required fee in full within the time specified above will result in County notification to the State that a fee



was required but not paid, and could result in State imposed penalties and recovery under the provisions of the Revenue and Taxation Code. In addition, Section 21089(b) of the Public Resources Code, and Section 711.4(c) of the Fish and Game Code, provide that no project shall be operative, vested, or final until the required filing fee is paid.

**DEFENSE OF LAWSUITS AND INDEMNITY:** The applicant shall: (1) defend, indemnify and hold harmless the County, its agents, officers and employees from any claim, action or proceeding against the County, its agents, officers and employees to attack, set aside, void or annul this approval or any of the proceedings, acts or determinations taken, done or made prior to this approval; and (2) reimburse the County, its agents, officers or employees for any court costs and attorney's fees which the County, its agents, officers or employees may be required by a court to pay as a result of such approval. At its sole discretion, the County may participate at its own expense in the defense of any such action, but such participation shall not relieve the applicant of any obligation imposed by this condition. The County shall notify the applicant promptly of any claim or action and cooperate fully in the defense.

**JUDICIAL REVIEW TIME LIMITATIONS:** The time within which judicial review of this decision must be sought is governed by Code of Civil Procedure Section 1094.6, which has been made applicable in the County of San Diego by San Diego County Code Section 11.120. Any petition or other paper seeking judicial review must be filed in the appropriate court not later than the 90th day following the date on which this decision becomes final; however, if within 10 days after the decision becomes final a request for the record of the proceedings is filed and the required deposit in an amount sufficient to cover the estimated cost of preparation of such record is timely deposited, the time within which such petition may be filed in court is extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the party, or the party's attorney of record. A written request for the preparation of the record of the proceedings shall be filed with the Director, Department of Planning and Land Use, 5201 Ruffin Road, Suite B, San Diego, California 92123.

The foregoing decision was approved by the Director of Planning and Land Use on date of decision. A copy of this decision, and the documentation supporting the decision, is on file in the Department of Planning and Land Use offices at 5201 Ruffin Road, Suite B, San Diego, California.

DEPARTMENT OF PLANNING AND LAND USE  
ERIC GIBSON, DIRECTOR